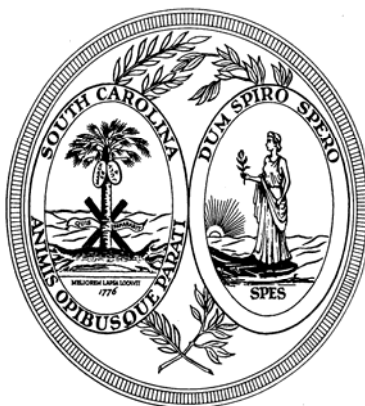


LONG TERM CARE OMBUDSMAN PROGRAM

VOLUNTEER OMBUDSMAN HANDBOOK



**South Carolina
Lieutenant Governor's Office on Aging
Office of the State Long-Term Care Ombudsman**

October 26, 2005

VOLUNTEER OMBUDSMAN HANDBOOK

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|------------------|--|-----------|
| PART I. | INTRODUCTION TO THE VOLUNTEER OMBUDSMAN PROGRAM | |
| PART II. | PROGRAM OVERVIEW | 3 |
| PART III. | THE VOLUNTEER OMBUDSMAN’S ROLE AS ADVOCATE | |
| A. | Why Do Residents Need Advocacy..... | 6 |
| B. | Role of the Volunteer Ombudsman | 7 |
| C. | Reporting Volunteer Activities | 8 |
| D. | Inappropriate Roles for Volunteer Ombudsmen..... | 8 |
| PART IV. | THE COMPLAINT PROCESS | 9 |
| A. | What is a complaint? | 9 |
| B. | Sources of Complaints | 10 |
| C. | Volunteer Ombudsman Role in Complaint Handling..... | 10 |
| D. | Routine Facility Visits..... | 11 |
| E. | Protocol for Visiting Facilities..... | 11 |
| F. | Confidentiality | 12 |
| PART V. | COMPLAINT RESOLUTION IN NURSING HOMES | |
| A. | Preparing for the Investigation..... | 14 |
| B. | Gathering Information | 15 |
| C. | Interviewing Skills..... | 16 |
| D. | Observation..... | 16 |
| E. | Building Trust..... | 17 |
| F. | Techniques for Earning Trust | 18 |
| G. | The Resolution Process..... | 19 |
| H. | Monitoring Complaint Handling..... | 21 |
| I. | Being Assertive in Resolving Complaints..... | 21 |
| PART VI. | COMPLAINT RESOLUTION IN RESIDENTIAL CARE FACILITIES | |
| A. | What You Need to Know..... | 23 |
| B. | Assess the Needs of Residents..... | 24 |
| C. | Determine Needs of Facility Staff..... | 24 |
| D. | Complaint Handling | 24 |

PART I. INTRODUCTION TO THE VOLUNTEER OMBUDSMAN PROGRAM

The South Carolina Long Term Care Ombudsman Program is made up of the State Long Term Care Ombudsman located in the Lt. Governor's Office on Aging, and ten regional ombudsman programs located in the Area Agencies on Aging. Seven of the area agencies are public entities, housed within regional planning councils. The remaining three area agencies are private non-profit organizations. The State Long Term Care Ombudsman directs the program from within the Office on Aging. State office staff are responsible for the implementation, funding, training and evaluation of the statewide program.

The South Carolina Omnibus Adult Protection Act also mandates that long term care ombudsman serve as the mandated investigator for all abuse, neglect and exploitation complaints occurring in nursing homes, residential care facilities, psychiatric hospitals, and facilities operated or contracted for operation by the State Department of Mental Health and the Department of Disabilities and Special Needs.

Increasing demands on the ombudsman program to investigate the growing number of complaints and to be a frequent presence in facilities continues to put pressure on the program to do more with less. Most ombudsman programs throughout the nation use volunteers in varying capacities to help ease the workload on full-time staff.

The original intent of the ombudsman program was to use volunteers in provision of services. In his vision for the program, Arthur Fleming, former U.S. Commissioner on Aging, felt that it was important for community-based volunteers to participate in order for the program to be successful. Ombudsman volunteers should be the eyes and ears of the community, working to ensure that its residents were treated with dignity and respect. In 1988, AARP developed a project to recruit volunteer ombudsmen. AARP has also developed a training manual "Developing and Managing Long Term Care Ombudsman Volunteer Programs" which will be used in training South Carolina's volunteer ombudsmen.

Across the nation, one of the most common functions for volunteer ombudsmen is to make regular friendly visits to facilities and advocate for the residents' best interests. They act to encourage respect for the principles and laws which facilities must abide by, and most importantly, help residents to help themselves and to negotiate with the facilities to help resolve complaints. Many facility administrators surveyed throughout the nation tend to view volunteer ombudsmen as a resource for identifying issues that can be handled before intervention is needed by the regulatory agency.

This manual was developed to assist Regional Ombudsmen to manage successful Volunteer Ombudsman Programs. Achievement of the goals of the Long Term Care Ombudsman Program is best served by the active participation of Volunteer Ombudsmen. The South Carolina Lt. Governor's Office on Aging encourages the involvement of volunteers. Nursing Homes and Community Residential Care Facilities/Assisted Living Facilities will be encouraged to participate with the Regional Long Term Care Ombudsman Programs in placing volunteers in their facilities.

Regional ombudsman programs wishing to participate in the volunteer program are encouraged to assist in the creation of meaningful and productive roles in which volunteers might serve. The program will be voluntary for nursing home and residential care facilities and volunteers will only be assigned to facilities that have agreed to participate in the program.

Volunteers will be recruited by the regional ombudsman programs, with assistance from the State Long Term Care Ombudsman and AARP. Following screening, training, and certification, each volunteer will be assigned to a facility that has agreed to participate in the program. The volunteer will receive orientation from the facility to acquaint the volunteer with facility procedures, and introduce the volunteer to facility staff and residents. This will be completed prior to making regular contact with facility residents. The orientation will be designed by the facility with support from the regional ombudsman program.

Having a volunteer ombudsman assigned to a particular facility will provide the most accessible means of complaint resolution. The Volunteer Ombudsman Program seeks to diminish the sense of isolation experienced by some residents, especially those without family. The volunteer ombudsman can assist the resident in achieving a sense of self-determination, and will strive to reinforce the importance of residents' rights. While residents are provided information regarding their rights upon admission, the volunteer ombudsman will be there as the resident adjusts to the facility to reiterate those rights and offer assistance in exercising those rights.

Even though facilities are required to have a grievance procedure, residents may be hesitant to voice concerns/complaints to the facility staff person for any number of reasons, i.e., fear of retaliation if the complaint was directed at a staff member. However, since volunteer ombudsmen are often members of the community and not tied to the facility, they are perceived as more objective/receptive to complaints.

Residents may hesitate to register a complaint with a volunteer ombudsman initially; however, one of the advantages of the volunteer program model is that it enables the volunteer to become a trusted friend over a period of time. By regular contact with residents, the volunteer becomes a confidant. The resident is assured of confidentiality, and the volunteer ombudsman will not pursue a complaint without the resident's permission unless abuse, neglect or exploitation is alleged. Reporting of abuse, neglect or exploitation to the Regional or State Ombudsman is mandated by the Omnibus Adult Protection Act.

Once the volunteer ombudsman gains the resident's confidence, he/she may be able to provide encouragement and information to allow the resident to handle the complaint himself or the volunteer ombudsman may be asked to speak on behalf of the resident to administration and/or other parties regarding any problems. The volunteer ombudsman program is an excellent means of providing prompt feedback to the resident regarding efforts to resolve complaints.

PART II. PROGRAM OVERVIEW

A large majority of State Ombudsman Programs utilize volunteers. Of the 52 programs (50 states, plus the District of Columbia and Puerto Rico), 46 now have volunteer programs. The numbers of volunteers in the programs varies enormously among the states from as few as four (4) to as many as 3,500 in Iowa. As of 2005, six (6) states do not have volunteer ombudsman programs—Alabama, Arkansas, Hawaii, Nevada, South Dakota and Wyoming.

Of the 46 state programs that use volunteers, 38 states authorize the volunteers to handle complaints. This means that three-fourths of all programs use at least some volunteers to handle complaints. The eight states that do not utilize volunteers to complaint investigations are Delaware, DC, Idaho, Indiana, Iowa, Puerto Rico, South Carolina, and West Virginia. However, South Carolina does authorize volunteers to help residents resolve some minor problems with the facility.

Thirty-eight state programs report having a certification process for their volunteers. South Carolina requires 30 hours of certification training full-time staff and volunteers. Among those programs that require certification training, 43 programs require classroom training from five and 48 hours. Twelve programs, including South Carolina, require a test for certification, 17 state programs, including South Carolina require on-site training/orientation in facilities. In addition, 19 state programs, including South Carolina, require continuing education between six (6) and 30 hours annually. Five (5) programs, including South Carolina, require an internship or probationary period for volunteers.

South Carolina's Program Structure

The South Carolina Volunteer Ombudsman Program is voluntary for nursing homes and residential care facilities. Volunteers will be assigned to only those facilities that have agreed to participate in the program. Volunteers will be required to complete 30 hours of certification training. Testing will also be required with a minimum of 70% proficiency before becoming certified. Volunteer ombudsmen will be recruited, screened, trained and placed by the regional ombudsman with assistance from the state office. Volunteers must have passed a probationary period and be certified by the State Long Term Care Ombudsman before being assigned to a facility.

Volunteer ombudsmen must follow standard operating procedures as outlined in the Ombudsman Policies and Procedures Manual and the Volunteer Ombudsman Workbook for resolving cases for which they have been authorized to investigate. Volunteer ombudsmen will be required to complete weekly reports to the regional ombudsman during the probationary period and monthly thereafter.

All Regional Ombudsman Programs must maintain records of volunteer agreements, conflict of interest statement, background checks, etc. All Regional Ombudsman Programs must maintain accurate reports of all volunteer activities and interventions. Regional Ombudsman Programs must also maintain and document continuing education completed by volunteers. Regional

ombudsman programs must prepare and maintain annual on-site assessments of volunteers to be used for re-certification requirements.

Regional ombudsmen are responsible for preparing and submitting quarterly programs reports to the State Long Term Care Ombudsman (SLTCO) to include:

1. Current roster of volunteers including addresses and phone numbers;
2. Current reports of activities and interventions by volunteers;
3. Annual assessment of volunteers; and
4. The number of volunteers requiring training.

In order to be selected as a volunteer ombudsman, volunteers must:

1. Must be 21 years of age or older
2. Must have a valid driver's license and transportation
3. Must have acceptable verbal, listening, and writing skills
4. Must have the ability to maintain confidentiality
5. Must be free from conflict of interest
6. Must agree to abide by the Ombudsman Code of Ethics
7. Must not use controlled substances
8. Must not have a criminal record
9. Must not have or have had a family member, friend or relative in the facility where placed

All participating Regional Ombudsman Programs should have an ombudsman designated to coordinate volunteer ombudsman activities. Whether this is a full-time position or an additional job responsibility should be based on the number of participating facilities and the number of potential volunteers. Studies have shown that the most successful volunteer ombudsman programs (with at least 20 or more volunteer ombudsmen) have an ombudsman designated as volunteer ombudsman coordinator.

The regional ombudsman or designee will accompany the volunteer ombudsman on initial visits to the assigned facility. The regional ombudsman will make on-site visits with the volunteer ombudsman at the end of the probationary period as part of the certification process and annually thereafter for re-certification.

Volunteer ombudsmen may act in various capacities depending upon the needs of the individual program. Volunteers may serve as friendly visitors to nursing homes and residential care facilities; assist administrative support staff with routine office duties, data entry, correspondence, etc.; provide training to residents and families concerning residents' rights and advance directives; assist residents in resolving minor problems with the facility such as lost or stolen items, call lights not being answered, or needing assistance with meals, etc.; participate in resident and family council meetings when asked; or bring issues or problems to the attention of the facility administrator, DON or social worker and to the attention of the regional ombudsman.

Volunteer ombudsmen are NOT authorized to investigate abuse, neglect or exploitation complaints; investigate complaints which would involve reviewing the resident's medical records; issues involving guardianship problems; issues regarding resident transfers and discharges; family disputes; treatment issues (This is a regulatory issue and is usually not investigated by ombudsmen unless the medical issue can be based on fact and not medical opinion), or facility problems, such as staffing shortages, physical plant inspections, etc.

Volunteer ombudsmen must always wear ombudsman identification badges for easy identification. Upon entering the facility through the main entrance, volunteers must notify the administrator or the designated staff person before entering any resident's room. Volunteers must ask residents for permission to speak with them and ask permission before entering the resident's room.

Volunteers must meet with the administrator or DON for any problem regarding issues that have been brought to their attention during the visit and also follow up on issues that were brought up on the previous visit. Volunteer ombudsmen should also follow up with the resident to assure that previous problems have been resolved to their satisfaction. Volunteer ombudsmen are also required to notify the staff person in charge when leaving the facility.

Volunteer ombudsmen are special. They will be asked to make a significant commitment of their time to the Long Term Care Ombudsman Program, not only in terms of pre-placement and on-going in-service training, but through weekly contact with residents, reporting and travel.

PART III. THE VOLUNTEER OMBUDSMAN'S ROLE AS ADVOCATE

A. Why Do Residents Need Advocacy

In an institutional setting certain methods of operation develop for convenience and efficiency which may conflict with the individual needs of residents. Yet residents may be unable to express their particular needs without assistance from others.

Barriers to self-advocacy are:

- Loss of hearing
- Loss of speech
- Loss of sight
- Loss of physical strength to persevere
- Immobility
- Mental impairment
- Effects of medications
- Depression
- Inaccessibility of staff

Psychological/psychosocial barriers are caused by:

- Fear of retaliation
- Sense of isolation
- Lethargy
- Disorientation
- Loss of confidence
- Result of depersonalization
- Sense of weakness resulting from illness
- Disdain for the label "complainer"
- Social pressure to conform
- Belief that this is the best it can be
- Sense of hopelessness and/or despair
- Fear of upsetting the family
- Inability to question authority
- Mystique about medical issues
- Unfamiliarity with staff
- Lack of experience with assertive behavior
- Stereotypes, fears about age

Individual problems which may surface in long term care facilities are:

- Loneliness – need of someone to talk to
- Boredom – not enough social or personal activities
- Problem with roommates

- Lack of privacy
- Poor food service or quality
- Inability to get services, care or attention because of physical or communication problems
- Physical or drug restraints
- Desire on resident's part to leave the facility
- Safekeeping of personal funds and personal possessions
- Desire to go outside of the facility for community activities
- Need for assistance to find or purchase services
- Insufficient medical or nursing care
- No rehabilitative care
- Neglect
- Patient abused physically or mentally
- Loss of dignity and feeling of respect based on general treatment in the facility
- Additional or high charges for "extra" services
- Transfer from one room to another without notice
- Transfer to another facility because of change from private pay to Medicaid
- Desire to make a will or Advance Directives
- Need for legal assistance

B. Role of the Volunteer Ombudsman

As a volunteer ombudsman, you will be an advocate acting on behalf of residents. In some cases, you will be able to educate, support, and encourage residents to engage in self-advocacy, to represent themselves. In other situations, you will be representing the resident(s). There is a basic complaint process, and a problem solving process that ombudsmen use to analyze and resolve problems. This process, and its perquisite skills, is the focus of this chapter.

A certified volunteer ombudsman works under the direct supervision of the regional ombudsman or regional volunteer coordinator. **NOTE: Failure to follow the direction of the LTCO staff person shall be grounds for de-certification as a volunteer ombudsman.** The role of the volunteer ombudsman is to:

1. Provide advocacy, information and referral, resident and family council activities and routine visits, as well as perform various clerical and administrative duties.
2. Provide appropriate documentation to the regional ombudsman or volunteer coordinator of all activities done on behalf of the ombudsman program.
3. Perform his/her responsibilities in accordance with all applicable federal and state laws, rules and regulations as outlined in this manual.
4. Make regular weekly visits (at least 4 hours per week) to assigned long-term care facilities.
5. Build relationships with residents.
6. Provide a presence in the facility.
7. Empower residents to advocate on their own behalf and exercise their rights.
8. Inform residents, facility staff and family members about resident's rights and ombudsman services.

9. Attend resident and family council meetings when invited.
10. Interface with the facility Administrator and Social Worker to advocate for resident rights.
11. Keep accurate records of activities and concerns reported and submit timely monthly program reports to the regional ombudsman and/or volunteer coordinator.
12. Participate in ongoing continuing education training.
13. Refer complaints to the regional ombudsman unless authorized to investigate.
14. Report immediately suspected/alleged or actual complaints of abuse, neglect or exploitation to the regional ombudsman.
15. Adhere to the Confidentiality Agreement at all times.
16. Request technical assistance from the regional ombudsman when unsure of how to proceed on any problem or issue.

C. Reporting Volunteer Activities

Activities by volunteer ombudsmen must be reported as required to the regional ombudsman. Each volunteer must refer to the regional ombudsman or volunteer coordinator complaints received or observed that he/she is not authorized to investigate. Activities/Monthly Reports must be submitted and should include but not limited to the number hours spent in the facility, the number of facility visits, the number of residents visited, the number of training attended and conducted, and the number of family and resident council meetings attended. A system of records must be maintained on each volunteer including dates of service, positions held, duties performed, evaluation of work and awards received. Volunteer personnel records shall be accorded the same confidentiality as staff personnel records.

D. Inappropriate Roles for the Volunteer Ombudsman

The following duties are **inappropriate roles** for the volunteer ombudsmen:

1. Investigating abuse, neglect, or exploitation complaints
2. Reviewing the resident's medical records
3. Issues involving guardianship problems
4. Issues regarding resident transfers or discharges
5. Issues involving family disputes
6. Issues involving resident medical or treatment problems
7. Facility issues such as staffing shortages, physical plant inspections, etc.
8. Participating in the direct care of resident needs. (Feeding, transportation, helping residents walk, pushing wheelchairs, transferring etc.)
9. Handling resident's money or personal belongings
10. Giving direction to any facility staff
11. Making referrals directly to the regulatory agencies
12. Discussing ombudsman business with anyone but ombudsman staff

PART IV. THE COMPLAINT PROCESS

Complaint investigation is the highest priority for Long Term Care Ombudsmen. Although volunteer ombudsman will not be conducting complaint investigations, they will most likely be called upon to help residents resolve some minor issues with the facility. Helping residents resolve problems with the facility is really nothing more than a process that volunteers must follow from receipt of a problem through investigation and resolution. Although volunteer ombudsman will refer complaints to the regional ombudsmen for investigation, they must be familiar with the complaint process so that they play a meaningful roll as resident advocate.

A. What is a complaint?

This basic question is a confusing one for many ombudsmen. Are complaints only those problems that are reported to the regional ombudsman, only those referred to the regulatory agency, only those referred to law enforcement, or anything a resident voices concern about?

In its simplest definition, a complaint is any expression of dissatisfaction or concern. This does not mean that full scale investigations must be initiated every time someone says today's lunch tasted bad. Many people express dissatisfaction just to let off steam or to have some way of expressing themselves about things over which they have little control. They may not expect or want you to intervene on their behalf. Some residents may be disoriented as to time and place and express complaints that relate to the past. The volunteer ombudsman's task is to get to know residents individually and to perfect their skills well enough to be able to determine when such expressions are actual requests for assistance.

On the other hand, problems sometime exist in a facility about which no complaints are voiced. An absence of complaints may not mean that all the residents are receiving quality care or experiencing an acceptable quality of life. There are many reasons why residents are reluctant to voice complaints. Fear of being branded a "complainer," living in isolation, feeling hopeless, fear of retaliation, simple lack of awareness that they have a legal right to complain or lack of knowledge of rights and benefits—are factors that prevent persons in institutions from voicing grievances.

A lack of reported complaints should be taken as an indication of the need to reach out to the residents. An on-going presence within a facility will make the volunteer ombudsman a familiar figure to the residents. Once trust has been established, residents and their families will begin voice problems and complaints and be more assertive in voicing their rights. The volunteer's ability to detect concerns of residents which are only hinted at and to observe situations which require action is as important as the ability to respond to a direct request for assistance.

Many people who make complaints need help focusing on the actual problem. Ombudsmen will need to sort out the problems and determine which are most important. Many people will not complain until a problem has persisted for a long time. When they do complain, there may be a lengthy history of events and circumstances to consider.

Complainants may be highly emotional about a complaint. As a result, problems often are stated in sweeping terms (“the food here is terrible!”). Ombudsmen will need to work with the complainant to pinpoint WHAT it is about the food that makes it unacceptable.

B. Sources of Complaints

An ombudsman may receive complaints from a variety of sources, including:

1. residents
2. relatives or friends of residents
3. local advocacy or friendly visitor groups
4. facility staff
5. social work and human service agencies
6. hospital personnel; and
7. legislators and political leaders

Depending upon how the local program works, most complaints will probably come either from visits in the facility or phone calls to the regional ombudsman’s office.

During facility visits, ombudsmen must be alert to observe situations which may not be voiced directly as complaints. Ombudsmen must be sure that their name and number are posted in the facility. If possible, ombudsmen should cultivate good relationships with staff members or with residents who can contact the ombudsman program on behalf of residents with less ability to communicate. It is a good idea to have generic business cards printed with the name and phone number of the volunteer ombudsmen to hand out to staff and residents.

Few residents will personally make a complaint to an ombudsman unless he/she is a frequent visitor in the facility. Most residents will not feel comfortable complaining to a stranger, and therefore need to know and trust the person before talking openly about their concerns. In addition, many residents do not know that they have the right to complain, or they feel that making a complaint will not do any good.

In some facilities a resident or family council may bring problems to the attention of the volunteer ombudsman. Complaints made by such groups help to protect and support an individual resident or possibly all facility residents.

One of the most common sources of complaints is the relatives of residents. However, they too may hesitate to complain for fear of retaliation against their loved ones. Families may fear that once the facility staff has labeled them as “complainers” their credibility will be damaged.

Keep in mind that the ***needs and interests of families are not necessarily the same as the needs and interests of the residents***. Staff complaints may be based on a variety of motives. On the one hand, many staff are concerned about residents and want to provide the best care possible. When conditions in a facility are poor, they may look for outside help in trying to correct the problem.

On the other hand, some staff become disgruntled with their employer due to low pay, poor working conditions, the way they are treated, or other disputes with management. A person with a grudge against a facility may not be a reliable source of information.

C. Volunteer Ombudsman Role in Complaint Handling

As stated previously, volunteer ombudsmen may act in various capacities depending upon the needs of the regional ombudsman program. Volunteers may serve as friendly visitors to nursing homes and residential care facilities; assist ombudsman administrative support staff with routine office duties, data entry, correspondence, etc.; provide training to facility residents and families concerning residents' rights and advance directives; assist residents in resolving minor problems with the facility such as lost or stolen items, call lights not being answered, or needing assistance with meals, etc.; participate in resident and family council meetings when asked; or bring issues or problems to the attention of the facility administrator, DON or social worker and to the attention of the regional ombudsman.

D. Routine Facility Visits

The primary role of the volunteer ombudsman is to make friendly visits to the facility and advocate for the rights and interests of residents. In making these visits, volunteer ombudsman must follow the steps listed below:

1. Routine visits shall be unannounced and may be staggered.
2. The volunteer ombudsman shall observe and document any conditions in the facility which could adversely affect the health, safety, welfare or rights of residents.
3. The volunteer ombudsman shall assure that all residents and their representatives receive a brochure explaining the Residents' Bill of Rights and the Volunteer Ombudsman Program.
4. The volunteer ombudsman shall explain the purpose of the ombudsman program and introduce himself/herself to residents in the facility.

E. Protocol for Visiting Facilities

When a volunteer ombudsman makes a friendly visit to any facility, they must first notify the Administrator, D.O.N., Social Worker, or charge nurse that they are in the facility or follow the sign-in procedure of the facility. The volunteer ombudsman must also notify staff when leaving or sign out. Visits may be made any day of the week during normal visiting hours. Visits may be made during weekends or after 5:00 p.m. if the volunteer's work schedule is such that the volunteer is unable to visit during normal visiting hours. However, the volunteer should report this to the facility administrator or DON.

Volunteer ombudsmen must always knock on the resident's room door before entering for visits. They must introduce themselves, state their purpose and ask permission to speak with the

resident. It is also a good idea for the ombudsman to give the resident a copy of the Volunteer Ombudsman Brochure, and a copy of the Residents Rights Brochure at this time.

F. Confidentiality

All complaints are strictly confidential and cannot be shared with anyone outside of the ombudsman program. If people insist on having their names kept secret, they should be told that, while the ombudsman will do everything possible to protect their identity, there is the possibility that the facility may be able to determine who made a complaint. Ombudsmen should also explain clearly that some complaints are virtually impossible to investigate without revealing the identity of the resident.

If the use of a complainant's name is initially denied and it is needed to proceed further with a complaint investigation, the ombudsman should speak with the person again to explain the situation and to request use of the name. The risks involved in being identified should be discussed with the resident. A guarantee that retaliation will not occur should never be offered to obtain the complainant's permission to use his/her name. In cases where complainants agree to have their names revealed, the ombudsman should have a consent form signed authorizing the disclosure.

Sometimes a resident will insist that nothing be done or said, despite the ombudsman's appeals. In such cases, the ombudsman has little choice. There is only one exception to this rule: ***If you observe an incident of abuse, neglect, or exploitation, you must report the incident to the regional ombudsman for investigation.***

Volunteer ombudsmen will inevitably find themselves in a number of complaint situations which will call for special handling. The key to knowing how to respond to many of these situations is to remember that the ombudsman represents the resident. Some specific suggestions for a few of these situations are discussed below:

- A family member may complain about a resident's care. However, when you talk to the resident, he/she says everything is fine and/or asks you not to proceed. Your primary responsibility is to the resident. If pursuing the investigation would identify the resident, you must discontinue it unless the resident grants permission to proceed or if the complaint involves suspected abuse, neglect, or exploitation, which must be reported to the regional ombudsman.
- The reverse situation may also occur. The resident may complain, but a family member will urge you not to "rock the boat." This case is more clear-cut; the resident has requested assistance and you should honor that request. You should explain to the family that you are obligated to assist residents in resolving problems.
- Some complaints will come from relatives who want you to investigate, but do not want the resident to know what you are doing. For example, two relatives may be involved in a dispute over who is to provide for the resident's expenses. Or, relatives may fear that

the resident will be upset or alarmed by a problem. This is a particularly sensitive situation.

- In cases as above, it may be advisable to have a general conversation with the resident to ascertain whether or not he/she is concerned about the same problem mentioned by the complainant. You will have to judge whether or not there is a problem concerning the resident. If the resident is being victimized, you have a responsibility to report the problem. However, you should never try to become involved in family disputes which are not affecting the resident's well-being.
- Special problems can arise when dealing with a ***resident who is unable to make decisions for himself/herself, but has not been legally declared incapacitated***. If you receive a complaint from a resident who appears to be extremely confused, you should forward this report to the regional ombudsman. Even though the resident may be confused, the complaint should still be investigated. The complaint cannot be dismissed just because it comes from someone who seems confused.
- Other cases may involve residents for whom a guardian or conservator has been appointed. Generally, when cases arise involving such residents you should refer the case to the regional ombudsman.
- In some cases the interest of one resident will run counter to the well-being of a group of residents. For example, a complaint about a resident being denied the right to smoke may reveal that the resident has nearly set the home on fire by smoking in non-smoking areas. In such cases you should try to determine the facts and help the parties arrive at a solution which, as far as possible, protects the rights of the individual and the group.

PART V. COMPLAINT RESOLUTION IN NURING HOMES

The volunteer ombudsman will never be asked to investigate an abuse, neglect, or exploitation complaint. These must always be reported to the regional ombudsman for investigation within 24 hours or the next business day. However, in some instances, the volunteer ombudsman may be asked to investigate some complaints for which they have been given authority by the regional ombudsman. These will usually be quality of care issues such as cold food, lost or stolen items, staff not answering call lights, etc. Therefore, a volunteer ombudsman must be familiar with the policies and procedures for complaint handling.

The purpose of an investigation is to determine whether the complaint is valid and to gather the information necessary to resolve it. The successful resolution of a complaint often depends upon the quality of the investigation. A poor investigation can lead to a valid complaint being dismissed as invalid or unsubstantiated.

A. Preparing for the Investigation

After someone has voiced a problem or complaint, the ombudsman will need to analyze it in order to determine how to investigate it effectively. Among the questions to consider are:

1. What is the complaint about? In what general category does it fall (for example, residents' rights, quality of care, family problems, etc.);
2. Is the complaint under the purview of a volunteer ombudsman, or should the complaint be referred to the regional ombudsman or to the regulatory agency?
3. Who are the persons involved?
4. What, if any, agencies should be involved?
5. What steps has the complainant already taken to resolve the matter?
6. What, if any, resident rights may be relevant?
7. And most importantly, what result is the complainant seeking? ***Remember, the ombudsman role is to resolve the complaint to the satisfaction of the resident and/or complainant.***

Before proceeding with the investigation, the ombudsman should have some idea of the answers to these questions. First, what type of complaint is it? Does the volunteer ombudsman have the authority to investigate it or should it be referred immediately to the regional ombudsman? A complaint about general resident care, for example, may turn out to contain several very specific elements. Quality of Care complaints can be about the number of staff, the training of staff, the resident's treatment plan, the manner in which treatment is given, the failure to provide treatment, and many other problems. The ombudsman needs to know specifically what the complaint is about before starting the investigation. ***If in doubt, the volunteer ombudsman should contact their regional ombudsman for clarification.***

Second, who is involved in the complaint? Who is responsible and who has the power to do something about it? It may be important to gather names, phone numbers and addresses of all people who have some role in the situation. A complaint about resident care could include: the resident; the facility nursing staff, the facility administrator, and the resident's physician.

Third, are there any relevant agencies involved? A problem concerning Medicaid would likely involve the Department of Health and Human Services and/or the Department of Health and Environmental Control. A case related to Medicare would involve the Social Security Administration.

Fourth, what has the complainant done about the situation? If the complainant has taken some action, the ombudsman will need to know this so as not to duplicate unproductive actions or retrace steps. Ombudsmen also need to know the results of the actions already taken. This can help anticipate what obstacles there may be to resolving the problem. For example, has the complainant talked with the administrator, the director of nursing, or the charge nurse? Has the complainant contacted the physician? Have there been any meetings with staff of the nursing home? Have any other agencies been contacted? If the complainant has not taken any actions about the problem, then the ombudsman is in a position to suggest possible steps he/she can take. Advice of this nature helps the complainant to learn self-advocacy and may also save the ombudsman time for other problems.

Fifth, the ombudsman needs to know if there are laws or regulations which are applicable to the complaint. If the complaint is about resident rights, for example, the ombudsman may need to review the federal and state laws on resident rights. Likewise, if the case involves Medicaid, the ombudsman may need to contact the Medicaid agency or the regional ombudsman for assistance.

B. Gathering Information

An investigation is merely a search for information. Ombudsmen must seek to find information which will either prove or disprove the allegations made by the complainant. It is important that the ombudsman be objective in gathering information, and not make assumptions about the validity of a complaint. However, being an objective investigator does not mean that an ombudsman should lessen their efforts to improve the quality of care and quality of life for long term care residents.

Information can be gathered in many ways. Among the most common are interviewing and observation. Interviewing is a primary component of complaint investigation. An ombudsman should never go into an interview without a specific purpose in mind. It is the ombudsman's responsibility to discover the "who, what, when, where, and how" facts of the case.

At the beginning of a resident interview, the ombudsman should inform the resident of the confidentiality policy. In addition, it is extremely important to avoid making promises to the complainant regarding the resolution of the problem. It can be tempting, in a sincere effort to comfort a resident, to assure him/her that the problem will be resolved. However, this can lead to false expectations which may eventually be turned against the ombudsman.

Guidelines to follow during interviews:

1. Maintain objectivity (don't make assumptions about the validity of the information)
2. Try to establish rapport before addressing the problem;
3. Explain the purpose of the interview and the function of the ombudsman;
4. Use open-ended questions to encourage responses about the problem;
5. Use language that is easy to understand; explain any technical terms;
6. Guide the interview toward the desired goals, yet be flexible enough to adjust the goals according to any new information received;
7. Let the resident know when the interview is about to end; summarize what has been accomplished;
8. Explain how the information will be used and other steps anticipated in conducting the investigation and resolving the complaint. Secure the resident's consent to the planned action before proceeding.

C. Interviewing Skills

Active listening is the act of hearing and responding both to the content and to the feeling of what is being said. When listening, be alert to more than spoken words. Notice inflection of speech, qualities and tone of voice, facial expressions, a glint in the eye, body language, gestures, and general behavior.

Try to determine whether the complainant is glossing over some fact because they think it "detracts from their position." The ombudsman should explain that he/she is interested in the "bad" facts as well as the "good."

The responses of the interviewee may be designed to impress, appease, convince, or even distract. Ombudsmen should try to assess and take into account the interviewee's mood and possible motives. Listen for clues that the resident is unusually disoriented or confused on that particular day. If the ombudsman detects a good deal of nervousness or apprehension in someone's speech, he/she will have to address the factors that are causing these feelings before a free flow of information will be possible.

An interviewer should never completely believe or disbelieve everything a person says. The interviewer will have to sort out the difference between the "truth" and fiction, and learn to distinguish fact from someone's opinion, hearsay, characterization, or evaluation.

D. Observation

Observation is another important tool of complaint investigation. Many complaints can only be understood and verified by sharing in the experience of the complainant. Complaints that have to do with items such as sanitary conditions, and food often can only be fully checked out through observation.

When observing conditions in a facility it is important to use all the senses to determine what conditions are like. Ombudsmen should approach a situation requiring investigative observation with an open mind and an understanding of what is observed. During an investigative observation it is crucial that the ombudsman be as impartial as possible. If evidence is only looked at that fits a preconceived notion or theory, other evidence may be missed or much of the evidence may be misinterpreted. Recording observations as soon as possible after they are made will help to eliminate errors due to emotional bias.

Preparation for an observation is equally important. You need to have in mind what observations will help to investigate a particular case. For example, in the complaint about a resident being fed a regular meal instead of a pureed meal, you would be able to investigate by seeing the food served. By making an unannounced visit to the facility, you could observe a routine mealtime procedure. In addition, familiarity with applicable rules and regulations will allow you to better judge which observations are relevant to the individual case and which are extraneous.

A guide to sensory observations in a long term care facility are:

Sight

- Are the residents clean, shaved, hair combed? Are clothes dirty and wrinkled?
- Are call lights left unanswered?
- Are the staff pleasant? Do they smile at residents? Do they wear identifiable name tags?

Sound

- Are the call bells ringing often without being answered and turned off?
- Are residents actively involved in activities which promote conversation?
- Are the staff talking to residents and answering their questions?

Smell

- Are there strong urine odors in the hall?
- Do residents and rooms smell of urine?
- Does the food smell inviting?

E. Building Trust

Volunteer ombudsmen cannot help in resolving problems unless they are trusted by residents, staff and administrators. There are some specific things that can be done to help convince people that you are trustworthy and are working to help the residents and the facility.

1. Let the parties explain their problem even when you have prior knowledge. Put yourself in the position of being educated. People want to state their positions and grievances. You can learn a great deal by letting the complainant or staff person do the talking and listening attentively.

2. Listen appreciatively and with understanding. Good listening communicates your acceptance of the speaker. Try to understand the events and experiences of the other individual and appreciate his/her point of view. Train yourself to be alert, interested and to hear exactly what the party is saying. Encourage the speaker to elaborate. Demonstrate your attention through eye contact, leaning forward, etc.
3. Be comfortable with silence. Unless a silence is so awkward that the speaker is uncomfortable, do not rush to fill the gap. Use silence to organize what you have heard and to gather more information. The speaker will usually try to fill the gap by elaborating on what has been said.
4. Use note-taking positively. Explain that you take notes so that you can remember everything that is said. You can write down key words to jog your memory and expand on your notes afterward.
5. Reduce defensive communication. Ask questions in a way that actively supports open communication and reduces defensive responses.
 - Describe, don't evaluate. Avoid value judgments. Be careful not to judge the person by verbal or non-verbal expressions. Be descriptive without using value-loaded words.
 - Problem resolution, not control. If you attempt to take control, you can intimidate the resident and antagonize the staff. Be open, convincing the parties that you are there to help them in resolving problems and have no hidden agenda.
 - Empathy, not neutrality. Neutrality does not mean being disinterested. You should exhibit concern for all parties, even if you do not agree with what they say. You may understand the administrator's problems but are primarily interested in resolving the resident's complaints. Over-identification with either the resident or staff may result in ineffectiveness as an Ombudsman.

F. Techniques for Earning Trust

DO'S

- Let the individual do the explaining.
- Listen attentively and with understanding.
- Hear exactly what is being said.
- Be sensitive to sensory losses, memory lapses.
- Restate to clarify and assure understanding.
- Encourage the speaker to elaborate.
- Concentrate on physically demonstrating your attention -- use posture, facial expressions, eye contact, gestures, and voice quality.

- Be comfortable with silences.
- Use not talking positively.
- Keep conversations moving with open-ended questions.
- Repeat what has been said without adding or changing.
- Empathize.

DON'TS

- Make the complainant feel defensive.
- Evaluate, make value judgments, accuse, correct or indoctrinate.
- Appear judgmental in your posture or facial expressions.
- Take control of the conversation. If you control or threaten, you lose credibility.
- Create an impression of superiority. If you do, your usefulness will end.
- Seem detached or disinterested. Neutrality is not the same as lack of concern.

G. The Resolution Process

Once a complaint has been investigated and verified, the next step in the complaint handling process is resolution of the problem. This simply means coming up with a solution. Sometimes ombudsmen will develop a solution which they can try to "sell" to the respective parties; at other times they may have to bring people together and help them work out the solutions that are meaningful to them. The important point is that the solution has to "fit" the problem. For example, helping a resident search for lost clothing may be a nice thing to do, but it does not provide a lasting solution to a problem of mishandling of laundry or personal possessions.

This process may require the ombudsman to adopt a variety of roles, depending on the type of solution that seems appropriate. The major roles are: mediator, educator, planner, and advocate.

- 1 Mediator: Works with two opposing sides to bring them together for resolving a problem. In this position you do not take sides; but facilitate discussion and the exchange of information to settle the complaint.
- 2 Educator: Provides information about the law and applicable policies. For example, you can point out to people how the nursing home regulations relate to a specific condition.
- 3 Planner: Identifies the people (e.g., operator, facility administrator, the complainant) who will be responsible for carrying out a plan of action. You can discuss with people what steps need to be taken to accomplish a desired change.
- 4 Advocate: Works on behalf of the complainant to argue his/her cause. The advocate differs from the mediator in that the advocate takes a partisan stance on behalf of the resident.

Self-advocacy is an important potential remedy which you should urge complainants to perform when possible. This approach fits the volunteer ombudsman roles of educator and advocate. When people are able to resolve their own problems, they become more confident and less dependent. This gives power to the complainant, it's an empowerment strategy.

An excellent way to encourage self-advocacy is to help residents' voice concerns and resolve problems through use of the resident council. In some nursing homes, resident councils have been very effective in relating opinions and feelings to administrators, resulting in changes in the facility. In other homes, the resident council may be little more than an alternative activity to bingo. The more independent the council is of staff involvement, the more likely it can be useful in solving problems. You will have to evaluate each council to determine whether it is an appropriate forum for resolving complaints.

Mediation is a process by which you attempt to get the complainant and the appropriate facility personnel to meet together and develop a mutually agreeable compromise. This can be a difficult role, since both parties sometimes use the mediator as a target for their bad feelings. In some cases the parties may have different goals they want to achieve, while in other cases both parties may agree on the goals but disagree on how to reach them. A mediator is essentially a facilitator, trying to encourage open communication and helping both sides find as much common ground as possible.

Negotiation is bargaining with another party in an effort to arrive at a binding agreement. It is a strategy you will probably use often, as you will negotiate with the facility staff.

Complaints may be resolved in many ways. Most are resolved by simply speaking with the staff or administrator of a facility, but there are many forums other than the home which may be used to resolve a complaint. It is important to recognize when a solution to a problem, or an agreement, has been reached. Some people get so involved in investigation or negotiation that they fail to realize that they have won their point or solved the problem.

On the other hand, you should also recognize when no satisfactory solution is forthcoming within a specific time frame. Discuss with your regional ombudsman the next steps to be taken. You should have a set of procedures with the time frames for resolution within the facility, for intervention by the regional ombudsman, for contacting the regulatory agencies, etc., when such action is necessary.

When the same grievance continually recurs, it is time to discuss this with the regional ombudsman rather than handling the same complaint again and again.

Finally, there are two factors which should kept in mind while attempting to resolve a complaint. First, some complaints cannot be resolved. This can happen in spite of a thorough investigation, unquestionable verification, and a wise and persistent course of action during the resolution process.

Second, complaint resolution is not always clear-cut. In some cases a problem will go away, then reappear. In other situations, some parts of the problem will be taken care of, but not others. In some instances the complainant will not be completely convinced that the situation is as good as it should be, while at other times the complainant will say that everything has been solved

regardless of the ombudsman's desire to pursue the matter further. Most cases become less "black and white" the more they are examined, so it is possible that you will handle many cases which you can only call partially resolved.

H. Monitoring Complaint Resolution

Each regional ombudsman program should have a policy in place to follow-up on complaint resolution. The purpose of follow-up is to verify that resolution of the complaint has occurred and to assure the resident or complainant that everything possible has been done. Complaints should be followed up at one or two regular intervals. This may range from a few days to several months after resolution, depending on the nature of the complaint. If the problem is recurring or the agreed upon solution was not put into effect, it may be necessary to reopen the case.

I. Being Assertive in Resolving Complaints

An ombudsman must represent a resident's interests in a strong, but sensitive manner. When making inquiries on behalf of a resident it is important that the ombudsman gain the respect of the staff in the facility. It is also important to express the needs and desires of the resident, without alienating facility staff on whom the resident may depend for services.

Assertiveness is an attitude and a technique which allows a person to express views and stand up for rights without violating the rights of others. Acting assertively will increase self respect and confidence. Some people will sometimes disapprove of assertive behavior. However, respect and admiration can be gained by being responsibly assertive, showing respect for self and others, having the courage to take stands, and dealing with conflict openly and fairly. Perhaps most importantly, assertion--more frequently than non-assertion--results in individuals getting their needs satisfied and preferences respected.

ASSERTIVENESS.....involves standing up for oneself or another person in such a way that the basic rights of another person are not violated. It involves direct, honest, and appropriate expression of one's feelings, opinions, and knowledge. Assertion involves respect, not deference, both for oneself and for the other person.

AGGRESSIVENESS.....is expressing oneself in such a way that the rights of another person are sometimes violated. It involves overpowering other people with your personality in order to get what you want. It can involve a lack of respect or "putting down" of the other person. **An ombudsman should never use aggressive behavior with facility staff.** This is not a trait that is useful in helping residents resolve problems in the facility. Being aggressive will only alienate the ombudsman with the facility staff and will most likely sabotage the complaint investigation. Also, the facility administrator may file a complaint with the State or regional ombudsman because of the unprofessional and aggressive behavior exhibited by the ombudsman.

PASSIVENESS.....is failing to stand up for oneself or another person, or standing up in such an ineffectual manner that one's rights are easily violated. The goal of passiveness is usually to avoid conflict at any cost, or to gain approval of others. It involves a lack of respect for oneself (or one's position). An ombudsman should never be passive when dealing with facility staff.

What process does an ombudsman go through to produce an assertive attitude?

- 1 Validate the point of view of the other person. That is: acknowledge what the other person is saying -- the point they are making.
- 2 State your own problem, issues, or position. Be polite, but be very clear and concise in this description.
- 3 State what you want. Clearly define the result you want to obtain. Have in mind the minimum you will settle for but do not reveal that until necessary in negotiating.

Assertiveness training is based on the idea that behavior is learned and thus can be unlearned. If we receive a positive response to a behavior, we're apt to repeat it. One way to assure this is to begin with internal or self-reinforcement for a new behavior that we want. What you say and how you say it is important. People won't take you seriously if your body language is not consistent with your verbalization. Pay attention to how you stand and sit. If you're nervous when speaking, spend some time getting relaxed. Once you're relaxed, you'll feel better emotionally as well.

PART VI. COMPLAINT RESOLUTION IN RESIDENTIAL CARE FACILITIES

The work of volunteer ombudsman is also an integral part of ombudsman advocacy efforts in residential care facilities. Volunteers can perform many functions in residential care facilities including friendly visits, some complaint handling, advocacy, community education, information sharing, training and assistance to operators and resident empowerment. The regional ombudsman or designee will accompany the volunteer ombudsman on initial visits to the assigned facility.

The regional ombudsman should discuss in detail the types of complaints that the volunteer ombudsman may handle. **Again, abuse, neglect, and exploitation complaints are not conducted by a volunteer ombudsman. Volunteer ombudsman will be instructed by the regional ombudsman on the types of complaint investigations that are permitted.** The regional ombudsman will make on-site visits with the volunteer ombudsman at the beginning and end of the probationary period as part of the certification process and annually thereafter for re-certification.

Training for operators and staff of residential care facilities is usually very limited. Many operators are unfamiliar with South Carolina's regulations and standards. In this confusing setting, ombudsmen try to assure that residents live in a safe environment where their rights are protected. Because the residential care arena is relatively unstructured compared to nursing facilities, you need to spend some time learning about the regulations before you can begin to help residents resolve complaints.

A. What You Need to Know

Become familiar with the Residential Care Facility in which you have been assigned. What are the skills of the operator and staff? Do they own or operate other homes? What are those homes like? Is the facility in "good standing" with the regulatory agency? "Good standing" means that the facility has no outstanding violations, does not have a suspended license, etc.

Learn about the residents. Are they mostly elderly? What percentage of the residents have mental impairments? Are some residents being served by the Department of Mental Health? Do the residents have family or other regular visitors or contacts? What disabilities do they have? Where are they from? How long have they lived in the facility? Do they manage their own funds? If no, who does? What needs for assistance do they have? What needs from the larger community do they have?

Find out what other public agencies have placed residents in the facility. What are the agencies/ policies and practices? What is their jurisdiction? What resources might they offer you? Learn about private organizations, including churches and other charitable organizations that visit the facility. To what extent are they involved with the residents? Do any of them provide services to the residents? Do they have services from which residents might be able to benefit?

Determine whether developmentally disabled clients are living in the facility. What services are available to them through the developmentally disabled network?

Get a copy of the State's licensing standards and regulations and learn about the enforcement procedures and complaint process. What do the most recent inspection reports say about the facility in which you are assigned?

B. Assess the Needs of the Residents

Develop a checklist of needs in three categories:

- Do residents need dental care? Hearing aids? Eyeglasses? Various forms of medical care? Mental health services? Assistance with transportation and recreation? Legal assistance?
- How are these needs met by the residents themselves? By the facility operator and staff? By social services and other agencies that routinely visit the facility?
- In what areas do staff need more training to recognize the needs of their residents?

C. Determine Needs of Facility Staff

What is the current level of training, knowledge, and experience of the staff? You should be able to provide training in residents' rights, how to prevent abuse and neglect, the role of the ombudsman program, but what other areas do they need further training? Whom have they called on in the past for such assistance? Who might be able to provide such training, about nutrition, mental health, drugs, fire safety, State's regulations? Do the homes have ombudsman posters and brochures?

Identify and talk to able, interested residents and family members. Are they aware of their rights? Are they familiar with the State's regulatory system? Are they familiar with the ombudsman program? What are the facility's policies and procedures related to decision-making and to grievances? If necessary, categorize resident complaints in a systematic way. Demonstrate patterns of problems, either within the facility or outside, such as problems with the system or with lack of resources. Any problems that may risk the health, safety, or welfare of the residents should be reported to the regional ombudsman immediately.

D. Complaint Handling

Many of the same procedures and skills used in the nursing home complaint process apply to residential care facilities. However, some important differences must be taken into account:

- Board and care operators have less training than nursing facility administrators.
- Fewer professional staff are on hand or available to assist the residents or advise the operator.

- Staffing training and requirements are much looser than in nursing homes.
- Some problems are the result of poor coordination by the system: failure of Adult Protective Services or the mental health network to follow up, lack of resources, exclusion of residents from access to services or to social activities.
- Operators may be unaware of community resources they can tap into; they may not be familiar with agencies which can assist them with problems they experience.
- Community organizations may be less willing to reach out to residential care facility residents than to nursing home residents, especially if there have been any problems related to the mental disabilities of some residents; the community may have opposed the facility's presence in the neighborhood.
- Residents have less family and fewer visitors or connections with the world outside the home.
- Many residents have become accustomed to institutionalization from many years in mental health facilities or hospitals and are less able to advocate for themselves or take responsibility for their needs.
- In contrast to nursing home regulatory oversight, some regional regulatory agencies are not functioning adequately to back up an ombudsman action.
- Some smaller, older facilities may resist some of the "institutional" requirements imposed through regulatory standards.
- It will be difficult for ombudsmen to carry out anonymous investigations and to assure freedom from retaliation because of the fewer number of residents in the facility.
- State agencies which the ombudsman would think to turn to for assistance may have vested interest in the facility because they place people there and face few other options for such placements.

Ombudsmen should approach complaint investigation and resolution with the knowledge that confidentiality will be difficult to maintain and with the awareness that many problems are the result of ignorance. Ombudsman should approach resolution from an educational perspective, as a partner or resource to help the operator identify potential resources, to provide the training and information necessary to correct the problem.